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ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the Convention on the Rights of the Child by the Republic of Guatemala. The report's introductory summary asserts that although Guatemala has begun to undertake institutional and legislative efforts to fulfill its obligations under the Convention, reality still presents a grim picture for Guatemalan children. The report then presents observations and recommendations in the following areas: (1) definition of a child; (2) the right not to be subjected to torture; (3) children in conflict with the law; (4) children in situations of emergency; and (5) economic exploitation of children. The report's conclusion asserts that Guatemala's new legislation alone is insufficient in tackling the many problems of Guatemalan children, and that the rights of children in conflict with the law and in extreme poverty or hazardous conditions are continuing areas of concern. Cases of ill-treatment and miscarriage of justice against street children are included. The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Guatemala, in the following areas: positive factors, factors and difficulties impeding the implementation of the Convention, principal subjects of concern, and suggestions and recommendations. (EV)

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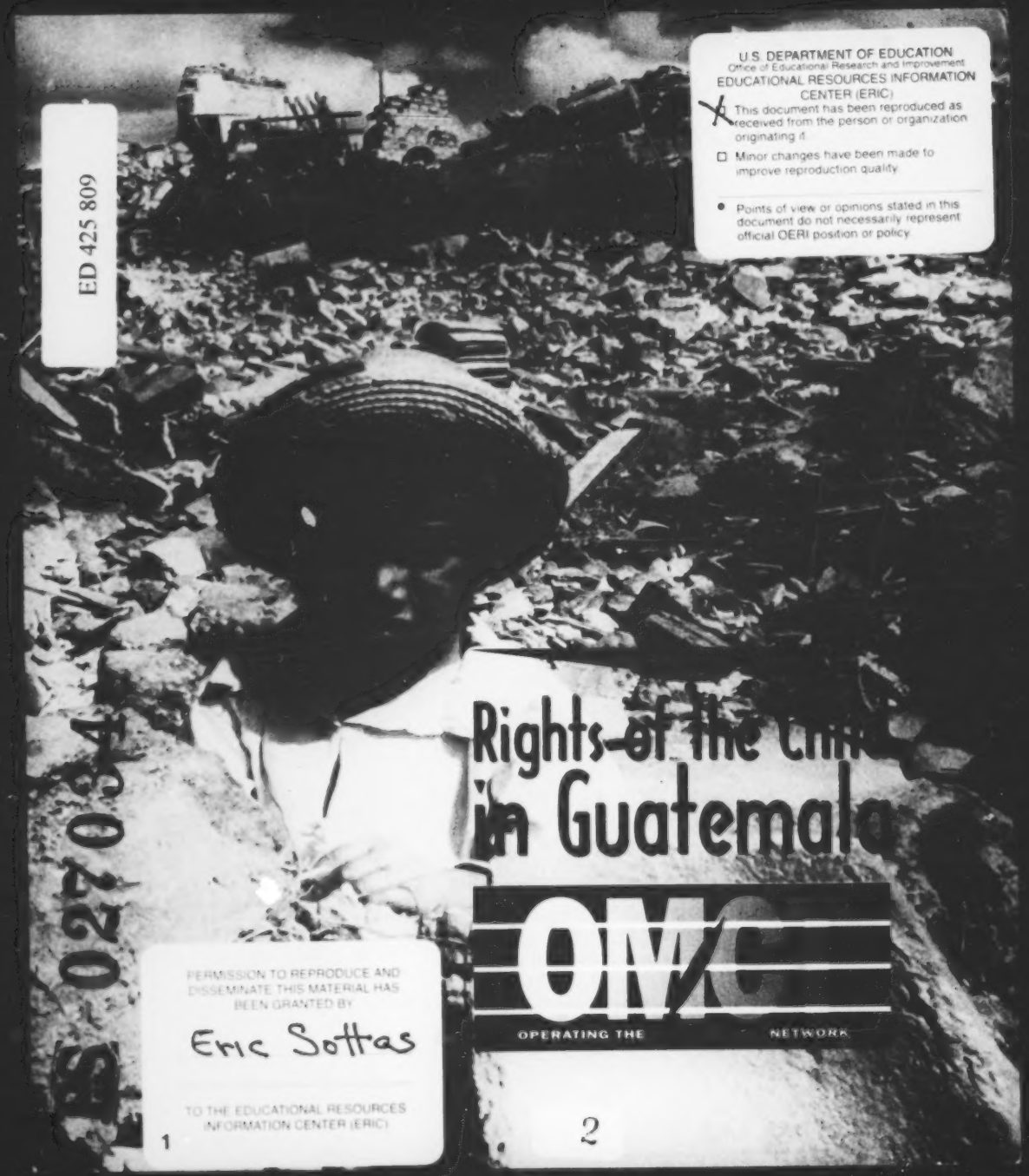

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Rights of the Child in Guatemala

OMC

OPERATING THE SOS-TORTURE NETWORK

COMMITTEE ON THE RIGHTS OF THE [illegible]

12th Session - Geneva, May 20 - June 7 1996

Remarks by OMCT/SOS-Torture in response to the Report by the Republic of Guatemala

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I. Preliminary Observations

1. The Convention on the Rights of the Child was ratified by Guatemala on 10 May 1990 and entered into force on 2 September 1991. By taking this step the government committed itself to undertake all the necessary measures to implement the provisions of the Convention.

2. Report CRC/C/3/Add.33 (hereafter referred to as the Report) lists a number of adjustments made by the government to ensure that, in matters of human rights, the treaties and conventions accepted and ratified by Guatemala are incorporated into domestic law. In the area of children's rights, several protection and monitoring bodies and programmes have been established, mostly through the Coordinating Committee for Government Human Rights Policy (COPREDEH) and the Office of the Procurator of Human Rights. Furthermore, the Congress of the Republic is presently considering a draft of a new Code on Childhood and Adolescence (Código de la Niñez y Adolescencia) which will govern all actions concerning children and minors and is intended to adapt national law to the Convention on the Rights of the Child. The new code is set to be adopted in the current year.

3. OMCT recognises that the government of Guatemala has made institutional and legislative efforts in order to fulfill its obligations under the Convention. Nevertheless, as is at times acknowledged by the Report itself, the process has not been completed and the measures taken have been far from effective. In fact, as is demonstrated by an ample body of evidence from independent sources, reality still presents a grim picture for Guatemalan children - a sector which makes up approximately 50% of the population and is among the most vulnerable groups.

II. Definition of a child

4. In paragraph 95 the Report states: "As *defined in the Minors Code contained in Congressional Decree No. 78-79, minors are persons under the age of 18 years.*" On the other hand, in paragraph 98 of the Report, we find that the Civil Code stipulates "*that males from the age of 16 and females from the age of 14 may*

contract marriage." Recalling that the marriage of a minor implies his/her emancipation, OMCT would like to stress the absence of clarity concerning the responsabilities of such persons in case of a criminal offence. It would therefore be useful for the government to give additional information concerning the legal status of minors contracting marriage.

5. Furthermore, paragraph 105 of the Report states that "*only Guatemalans aged 18 years and over may be recruited into the armed forces... and the recruitment of minors is prohibited.*" Nevertheless, Human Rights Watch 1995 reports that "*During the months of May, June and July (1994) ... the army launched a massive campaign, rounding up hundreds of indigenous and poor ladino youths without previous citation or family notification, and disregarding completely required exemptions for those who were the sole support of their families or under draft age.*"
In this particular instance, after a major outcry from human rights groups and the press, the Human Rights ombudsman, Jorge Mario García Laguardia, managed to obtain the release of 333 youths (including 148 minors) who had been recruited. However, the facts cited are cause for concern as they are indicative of a widespread practice and because they point to at least two serious violations: 1) the forced recruitment of particular sectors of the population, which is in breach of the principle of non-discrimination contained in Article 2 of the Convention on the Rights of the Child; and 2) the drafting of minors which is in contravention to the Constituent Law of the Army of Guatemala.

6. In its section on the right to education, paragraph 99, the Report states that article 74 of the Constitution stipulates that "*all inhabitants have the right and obligation to receive initial, pre-primary, primary and basic education within the age limits established by the law.*" The Report further states, in paragraph 108, that "*In August 1994 the Ministry of Education established the National Commission on Indigenous Educational and Cultural Policies and Strategies to elaborate policies and strategies to protect the indigenous cultural heritage, support intercultural bi-lingual education...*"
OMCT welcomes the introduction of the policies cited in paragraph 108 of the Report, however notes that according to

evidence the right to education contained in the Constitution has not been respected: either through cultural discrimination or a lack of monitoring by the education authorities in order to ensure that Indigenous children receive at least enough Spanish schooling to reach an adequate level in the country's official language. According to an August 1994 report by the Human Rights Commission of Guatemala (CDHG) to the United Nations Subcommission for the Prevention and Protection of Minorities, formal schooling in Guatemala is based on European history while no mention is made of the Mayan culture and *"is conducted in Castillan, in spite of the fact that a high percentage of the population only speaks its own language."*

OMCT therefore urges the government of Guatemala to implement the new policies mentioned as soon as possible and to ensure that all indigenous children be given the opportunity to exercise their full rights to education.

III. The Right not to be subjected to Torture

7. OMCT acknowledges that the Guatemalan Constitution and legislative instruments contain measures relating to the protection of children in conflict with the law. However, several well-documented cases show that these laws are ineffectively implemented and that those who break them often go unpunished. According to the legislation in force, any child detained must immediately be brought before a competent judicial authority and, moreover, no child may be taken to a police station, military quarters or a detention centre for adults (paragraph 146 of the Report).

Although such measures are intended to ensure the protection of children against torture as provided by Art. 37 of the Convention, it should be recalled that as the Committee against Torture stated at its 15th Session in November 1995, the practice of torture and other cruel, inhuman or degrading treatment or punishment in Guatemala seems to be endemic and that, moreover, there are allegedly numerous children among the victims.

Indeed, every year many children are arrested, detained or *"held"* illegally by the authorities. Although the law demands that they be taken before the

competent judicial authority, such children are frequently kept in custody at police stations or military quarters; and even when they are released shortly afterwards they are almost systematically victims of ill-treatment or torture.

8. In the period between September 1991, date of the entrance into force of Guatemala's ratification of the Convention on the Rights of the Child, and April 1995, when the Report was submitted, numerous cases were reported of ill-treatment, torture, arbitrary detention and extra-judicial killing of children by army officers, the National Police, Civilian Patrol groups and government sanctioned private police. In a report by the Human Rights Commission of Guatemala (CDHG, November 1993), it is stated that between 1 October 1992 and 30 September 1993, there were 16 extra-judicial killings of minors, 1 forced disappearance, 18 murder attempts, 3 arbitrary detentions and 13 death threats.
However, the Report makes only passing mention, and in a very general way, of this widespread phenomenon in paragraph 147, where it states: "*The Office of the Human Rights Procurator, through the children's Ombudsman, has investigated complaints of the ill-treatment of children.*" Furthermore, OMCT observes that such investigations seem to refer essentially to ill-treatment within the family or the educational system.

9. OMCT is gravely concerned about the superficial acknowledgement on the part of the Guatemalan government of the catastrophic state of juvenile justice in this country, and believes it would be appropriate to include detailed accounts of cases, including the sectors of the population most at risk - such as street children and indigenous minors - in order to shed light on the extent of the problem. The government should also outline the measures it plans to adopt in order to resolve it. The concern is all the more urgent given that a general pattern of impunity for crimes against children has been established.

10. In paragraph 153 of the Report it is stated that "*In the period 1990 - 1994 alone Casa Alianza, acting on its own or in conjunction with the Office of the Children's Procurator of the Public Prosecutor's Department, has initiated criminal proceedings in 188 cases involving a total of 282 persons.*"

OMCT would like to point out, first, that the initiation of criminal proceedings does not always imply their resolution. It would therefore seem appropriate to ask the government of Guatemala to provide more information on the cases alluded to including the outcome of the proceedings. Secondly, in its November 1995 publication *"Torture of Guatemalan Street Children - 1990 - 1995"*, Casa Alianza reports cases of serious violations - torture, ill-treatment, and summary executions - for which there were either no criminal proceedings, or the sentence given was disproportionate (lighter) to the crime and no compensation was paid to the victims or their families.

11. OMCT wishes to stress, as it has done already with Report CAT/C/12/Add.5 on Guatemala, that in order to initiate action against a torturer, it is essential, according to the legislation in force, for the victim to file a complaint . However, in practice, most of the victims fail to complain either because they ignore the procedure to be followed or because they fear reprisals. In accordance with Article 12 of the Convention Against Torture, those responsible of acts of torture must be automatically prosecuted. Indeed, the article in question makes it mandatory for the States Parties, of which Guatemala is one, to carry out an immediate investigation any time there are reasonable grounds to suspect that an act of torture has taken place within its jurisdiction. The fact that the prosecution of torturers depends, according to Guatemalan legislation, on legal action undertaken by the victim is a breach of Article 12 of the Convention Against Torture and should be considered a breach of the Convention on the Rights of the Child, particularly Articles 19.1 and 37 (a) which compel the State to take every legislative or administrative measure for the protection of children against any form of violence and to ensure that no child be submitted to torture.

12. The government identifies a lack of resources, shortage of personnel, etc. (paragraph 151 of the Report) as the main constraints to the investigation and prosecution of members of the National Police who have committed violations against children's rights. These same shortages, however, do not seem to correspond to the massive mobilisation of agents so often enacted as a means of repressing social unrest, even when

peaceful, such as student or land workers' demonstrations.
It should be noted, moreover, that usually the authorities refuse to carry out investigations. It seems to be the norm that those responsible avoid prosecution in spite of having been identified, and generally to continue in their posts. OMCT believes that more pressure must be placed on the system - through greater dissemination of the principles of the Convention, monitoring of state agents' actions and sanctioning of crimes committed against children - in order to implement the existing laws and the provisions of the Convention on the Rights of the Child.

13. On a positive note, OMCT acknowledges that some efforts have been made by the government of Guatemala towards making progress in this area. It has created a special Minor's Department in the National Police and initiated a training programme for police officers in children's affairs, as outlined in paragraphs 154 and 155 of the Report. We would like to stress, however, that such measures are only significant if they are closely monitored and enforced through the appropriate legal and judicial channels.

IV. Children in Conflict with the Law

14. Article 37 (c) of the Convention on the Rights of the Child states that:
"*Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.*"

15. Article 20 of the Guatemalan Constitution, as well as articles 5 to 7 of Title II of the Minors Code are in accordance with the above mentioned provisions and with the provisions of article 40 of the Convention on the Rights of the Child. However, as we have noted elsewhere in the Report, there is a lack of specific information about the practice of

the existing laws and the relative statistics and therefore no evidence that, apart from the existence of legislative measures, the judicial processes have been enforcing a full compliance with the Convention.
The lack of explicit information is cause for concern particularly because the Report itself admits to some problems, as stated in paragraph 304: "*It is argued that the internal changes of personnel in the National police prevent due continuity and follow-up; the problem is a shortage of resources for recruiting personnel and purchasing equipment for the Minors Department.*"
OMCT acknowledges the fact that the general institutional unrest in Guatemala may bear a negative influence on the fulfilment of obligations, but stresses yet again the importance of applying pressure to ensure that the rights of children in conflict with the law be regarded with the attention the issue and situation merit.

16. According to paragraph 118 of the Report, when a minor is apprehended by the police, the officer in question must indicate to him/her the right to "*remain silent and to make his statement before a judge.*" The Guatemalan procedural rules for dealing with minors are:

"*(a) The minor shall immediately be brought before a judge;*
(b) The judge shall question the minor in private;
(c) The agent of the National Police shall submit to the judge a report on the facts of the case;
(d) The agent of the National Police shall notify the minor's parents or other family members;"
(paragraph 301 of the Report).

However, we wish to stress the contradiction between such provisions and police practice. Many of the cases in which OMCT has had to intervene in recent years show that usually the detained minors are not informed of their rights, nor are they immediately brought before the judicial authority.
In practice, illegal custody seems to be regarded as the norm, as exemplified by the case of Santos Francisco Meda Veliz (14) and Jorge Enrique Tum (17) who, on 18 January 1994, were arrested by uniformed members of the National Police for suspicion and held for two days in a police sub-station in Guatemala City where they were made to perform humiliating tasks and were not fed. The only punishment received by the three

National police officers responsible for the illegal detention and ill-treatment of the minors and the violation of the procedural rules was a transferral to a different police post, while no formal legal proceedings were initiated against them.

It should also be pointed out that some of the procedural rules, even when adopted, do not fully correspond to the provisions of the Convention. For instance, the procedure of producing a minor before a judge precludes the presence of parents or tutors or legal assistance. This rule fails to provide any guarantees for the respect of the child's rights as set out in Article 40.2.b of the Convention.

Furthermore, OMCT observes that the judicial authority, on the strength of the child's first appearance, may order the implementation of precautionary measures, ie. transfer the minor to one of the existing centres (paragraph 60 of the Report) a measure which is similar to preventive detention and the duration of which does not seem to have been clearly determined.

This may consequently constitute a case of illegal custody as well as excessively long detention without the case having been effectively settled in accordance with the provision of Art. 40.2.b. of the Convention.

The possibility of this occurring is enhanced by the predisposition or prejudice, as stated in paragraph 297 of the Report, on the part of the judicial authorities, particularly in cases of reoffending.

17. According to the Report (paragraph 61) the reasons for the detention of minors include *"acts against personal integrity... acts against the public order... acts against the safety of individuals..."*

OMCT notes with concern the absence of definitions of such breaches. Special attention should be brought to bear on the expression *"acts against the public order."* The authorities ought to explain what such an offence implies, as well as the type and duration of applicable sanctions, and whether in such instances the case should be settled by the juvenile judge or some other judicial authority.

Such an explanation appears to be all the more important since, according to various sources, many students minors in age have been apprehended on several occasions and deprived of liberty due to their participation in demonstrations.

Moreover, in view of the apparent similarity between *"acts against personal integrity"* and those termed *"acts against the safety of individuals"*, the Committee

should ask the authorities to explain the difference between these two types of offence and if in practice they may give rise to a cumulation of penalties.

18. The Report, in paragraph 300, states that two of the aims for 1996 are to *"monitor the observance of the procedural manual in cases involving minors"* and *"to provide training for all members of the police in the procedural rules..."* OMCT regards this step as positive, however would like to see greater efforts made towards the sanctioning of police officers and any other state agents who violate the procedural rules.

19. According to article 37 (a) and (b) of the Convention on the Rights of the Child, the deprivation of a child's liberty is considered as a measure to be taken as a last resort and should be as short as possible. Paragraph 297 of the Report states that *"The Social Welfare Department, through the Office of Treatment and Guidance for Children, designed and is carrying out an assisted release programme, which is designed to avoid the unnecessary internment of adolescents who have committed trivial offences."* This leads us to believe that the Convention provision regarding the deprivation of liberty had not been respected. OMCT therefore urges the government of Guatemala to enact the designed release programme as quickly as possible and, finally, to abolish the practice of internment of children who have committed minor offences or any offence for which deprivation of liberty would be contrary to the best interests of the child. Furthermore, OMCT demands that the government of Guatemala set up an efficient mechanism to monitor the activities of all centres where minors in conflict with the law are cared for or detained. This follows a disturbing report of an incident in the Galviotas state detention centre for boys where, in October 1994, Luis Felipe Pop (16) was detained violently and severely beaten as punishment for trying to escape with other minors. Members of the staff at the centre later admitted to putting children in solitary confinement cells.

20. OMCT acknowledges the efforts made by the government in providing and restructuring services for the rehabilitation of children in conflict with the law, such as the Office for the Treatment and Guidance of Children (TOM), *"which provides comprehensive treatment for*

minors with behavioural problems" (paragraph 294 of the Report).
What is not clear in the Report are the criteria adopted in the decision to submit children to the care of TOM - for instance, what is meant by "*behavioural problems*" ; does the service cater specifically for children who have been charged and found guilty of offences; and what is the duration of care.

V. Children in Situations of Emergency

21. Although the Report cites a number of measures adopted in order to resettle refugees and displaced sectors of the population as a result of the armed conflict, there is no mention of laws or legal provisions intended to cater specifically for children caught in areas of armed conflict, nor details of the number of children affected by military operations and displacement.

22. One of the conditions laid down by returnees had been that the areas of resettlement be under the control of civilian authorities and that there be no military presence. The request was not respected. Indeed, military repression has continued, particularly as a response to industrial action or any form of demand for land and better conditions in rural areas. This has included (as cited in paragraph 4 of the present report) the forced recruitment of youths and minors. Other difficulties encountered by returnees have been the lack of services such as health, housing, food and education. A report by the CDHG to the United Nations Committee on Human Rights (February 1994) states that in spite of international financial aid, support provided by the government was ineffective, provisional and insufficient. The report further states that in the month of July 1994, in the area of Polígono 14, renamed Victoria de enero, situated in the North of El Quiché, "*155 children were gravely ill due to a malaria epidemic and 200 more were exposed to infection due to a lack of preventive measures.*"

23. OMCT is concerned about the plight of children in resettlement areas and aware that those children are often victims of discriminatory policy based on ethnic and social grounds. We therefore urge the

government of Guatemala to take the necessary measures to secure the safety of children in resettlement areas and all those confronted by armed conflict. Furthermore, we feel obliged to highlight the urgent need to find a quick and just resolution to the distribution of land in resettlement and all rural areas, the demilitarisation of such areas, and the putting in place of health, housing and education services in order to ensure the right to development and protection of all children affected.

VI. Economic Exploitation of Children

24. Art. 32 of the Convention states that: *"1. States Parties recognise the rights of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."*

"2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provision of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

25. The government of Guatemala does not lack the necessary legislation to tackle the problem of child labour. However, as is recognised by the Report itself (paragraph 306), the said legislation is not always implemented and child labour is generally tolerated.

The Report justifies the participation of minors in the formal economic sector in rural indigenous areas by stating that this *"is a 'tradition' stemming from the exploitation to which this population group has been subjected as part of its marginalisation since the colonial era."* No statistical data are given about the ages of children participating in the economic sector, nor of the conditions in which they

work. OMCT recognises that the existence of child labour in rural indigenous areas is part of a structural and historic phenomenon. However, we regard the government's attitude, as expressed in the Report, as one of passive acceptance of a situation which clearly puts at risk the health, education and development of children. We consider the situation all the more disturbing given the social, industrial and armed conflicts in rural areas where even adult employees are exploited and work in hazardous conditions.

26. Paragraph 306 of the Report further states that a new pattern is that of children's "*participation in the informal sector and marginal economic activities...*" Again, there is a lack of statistical data in the Report on this particular phenomenon which leads OMCT to believe that the government has not investigated the working and living conditions of such children and the kind of economic activities in which they might be involved. We therefore urge the government to look into the situation and take the necessary measures in order to ensure the protection of children exposed to hazardous conditions, discrimination, exploitation and crime, and to put in place the structures for their physical and psychological recuperation and social reintegration, as provided by article 39 of the Convention on the Rights of the Child.

27. OMCT acknowledges that the Republic of Guatemala aims to make greater efforts in order to comply with the Convention on the Rights of the Child and other international instruments it has ratified regarding child labour. However, we feel that the planned measures outlined in paragraphs 317 to 320 of the Report are inferior to the requirements of the situation. Given that the problem is, as expressed in the Report, a structural one, a stronger approach will be needed to ensure that national legislation and international norms are implemented and enforced. The unequal distribution of land and wealth, exacerbated by armed conflict and repression by the armed forces, is at the heart of the extreme poverty in which 85% of the Guatemalan people live. These are the fundamental causes of child labour and exploitation. Until there is genuine social change, it seems unlikely that legislation will suffice to stem the exploitation of Guatemalan children and the grave risks to their health, education and development.

VII. Conclusion

28. OMCT appreciates the "*difficulties of the implementation of the provisions of the Convention*" encountered by the Guatemalan government, as set out in paragraphs 325 to 326 of the Report. We also recognise that, in terms of the information given regarding the existing laws and adjustments made for the protection of children, steps are gradually being taken towards a full observance of the Convention. However, legislation alone is clearly insufficient in the tackling of the many problems facing Guatemalan children; particularly as the system is too weak to enforce the laws and often tolerates impunity.

29. The Report gives detailed accounts of the means employed by the government to put into effect some of the provisions of the Convention. However, there is insufficient information concerning the effectiveness of such measures and of the goverment's achievements in protecting the rights and welfare of children.
Indeed, as indicated elsewhere in the present OMCT report and in the additional information below, Guatemalan children are among the most affected by the country's military, institutional, economic and social crises.
Although the general state of unrest in which the country finds itself puts at risk the right to life and welfare of all Guatemalan children, of particular concern are the rights and welfare of children in conflict with the law; children affected by extreme poverty and living in hazardous conditions and exposed to crime, exploitation and ill-treatment; indigenous children; children living in areas of military operations.

30. OMCT believes that priority should be given to measures ensuring the observance, on the part of the National Police and the judiciary, of the rules governing their actions in respect of children in conflict with the law; to apply sanctions in all cases of mis-justice, ill-treatment, cruelty or violence against children; finally to set up the necessary structures, legal, economic and institutional, to disseminate and enforce the principles of the Convention on the Rights of the Child.

VIII. Additional Information

Cases of ill-treatment and miscarriage of justice against street children

Case No. 1

Thirteen years old Nahaman Carmona Lopez was killed by a member of the National Police on March 4, 1990. After being detained along with three other children for sniffing glue, he was ill-treated, had glue poured over his head and into his eyes, was thrown to the ground and kicked for several minutes. He died ten days later with 6 broken ribs, bruising over 60% of his body and a burst liver. After almost three years of legal battles, a retrial was ordered and four policemen were jailed for 12 years each and ordered to pay Q. 10 000 in civil damages to the boy's family within 3 days. Although the four policemen are in jail, the compensation has not been paid either by those responsible or by the government.

Case No 2.

Seventeen year old Walter Federico Flores suffered several injuries to the head and face after being bashed by two uniformed agents of the National Police, who are believed to be cadets, on October 23, 1991. A forensic report was made and a complaint was presented to the juvenile judge. The juvenile judge apparently did not pass the case on to a criminal court and the police refused to cooperate in the identification of the agents involved. The case was simply abandoned.

Case No 3.

On March 6, 1992, the Guatemalan army did a round up of suspicious people on 18th street, Zone 1, in Guatemala City. Along with adults, they arrested street children: Boris Velasquez (17), Jose Manuel Lopez (15), Karlo Antonio Contreras (16), Luis Antonio Roldan (16), Erick Mendez Lopez (16), Marvin Antonio Mejia (16), Moises Rivas Colomer (13), Juan Lopez Gonzalez (13). Witnesses described the way the children were beaten with rifles, handcuffed, tied up with rope and thrown into the back of a truck. They were then illegally detained.

A lawsuit was opened against the soldiers by Casa Alianza. The minors and witnesses made declarations. However, the officer whose name was given was let go after an interview and nothing else was done about the case.

Case No 4.
Seventeen year old Sergio Miguel Fuentes Chavez and another street youth were seen by a private policeman as they were attempting to steal a pair of sunglasses in a Guatemala City market. The policeman put his pistol to the boy's head and fired. The boy died instantly. The other youth was threatened with the same treatment and then let go.
In spite of calls from Casa Alianza, the Public Ministry did not initiate an investigation for six months and only did so after international pressure. An arrest warrant was issued for the policeman allegedly responsible of the murder but the warrant has still not been served.

Case No 5.
Street boys Ruben Garcia Gonzales (14), Daniel Rosales (10), and Victor Manuel Garcia (12) were shot at by two private policemen in the street on September 24, 1994. The first two boys died, the third was taken to hospital with serious bullet wounds.
Both private policemen were detained on the date of the crime and are currently still in jail. However, they have not been given a sentence and there has in fact been no trial as yet.

Case No 6.
Seventeen year old Americo Orantes and a number of other street youths held up a pedestrian in Zone 1, Guatemala City. At that point, a man dressed in civilian clothes came towards the youth and fired a shot in the air. The minors began to run off. The man continued to fire indiscriminately, hitting one boy in the right knee and mortally wounding Americo Orantes. The man who did the shooting was allegedly a member of the Criminal Investigation Department of the National Police. As a result of a worldwide urgent action launched by non-governmental organisations, an initial investigation was undertaken by the National Police. However, due to a fear of reprisals, the other children who witnessed the event refused to go to police headquarters to identify the photograph of the culprit. As a consequence, the case was left suspended.

Other Cases

Case No 7.
On 23 June 1993, the minors Tomas Pantzay Calel, Santos Patzay Calel and Fausto Patzay Chom were kidnapped by Sebastian Tol Felipe, Juan Cun

Ventura. Diego Ajpop Mejia and Raul Cente Ventura. respective chiefs of Civilian Patrol Groups (PACs) of the regions of Saquilla II. Pachoj. Xalbalquiej and Xepacol. The minors were captured for military service. however after being taken to a military detachment and later to military zone 20 in Santa Cruz de El Quiche. they disappeared. The Mutual Support Group (GAM). initiated judicial proceedings and on the 13th of June three of the four PAC chiefs were arrested while the fourth remained in liberty.

Case No 8.
In June 1993. the families of Jeronimo Morales Tiriquiz and Tomas Suy Canil took refuge in the offices of the Ethnic Communities Council of Rumujel Junam after receiving death threats. The threats were allegedly made because the rural workers refused to participate in the local Civilian Patrol Groups. The lives of the children belonging to these families were also placed at risk. The children's names are: Juan Morales Xon (10). Manuela Morales Xon (8). Anastasia Morales Xon (6). Domingo Morales Xon (4). Rolando Ismael Suy Mejia (9 months). Carlos Mejia Tian (12).

Case No 9.
On 11 May 1993. students Ana Elvira Cortez Montes (17). Erika Chapeton (16) and Ingrid Franco (16) were intoxicated by tear gas thrown by the anti-riot squad during a protest against the student identity card (cedula estudiantil) which annulled their right to travel cheaply on public transport. A number of other high school students were beaten and arrested. In order to justify the violent reaction. the army tried to link the students' demonstrations to the National Revolutionary Unit of Guatemala and alleged that arms had been found in the two schools attended by the demonstrating students. As a consequence the two schools were shut down.

Case No 10.
In April 1992. fourteen year old Armando Estuardo Lopez was hospitalised and operated on urgently after being attacked by a policeman who beat him across the stomach with a club. causing serious injury to his duodenum. The attack occurred during a raid organised by the army and police into the Instituto Central para Varones. the school where Armando was a top level student.

Concluding observations by the UN Committee
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191. The Committee considered the initial report of Guatemala (CRC/C//3/Add.33) at its 306th to 308th meetings (CRC/C/SR.306-308), held on 3 and 4 June 1996, and adopted* the following concluding observations:

A. Introduction

192. The Committee expresses its appreciation to the State party for its report and its replies to the Committee's list of questions as well as for the information provided on the most recent measures taken to implement the Convention.

193. The openness of the State party's high-level delegation in acknowledging the problems, difficulties and challenges facing the State party in implementing the principles and provisions of the Convention is highly appreciated. The Committee expresses its appreciation to the State party for engaging in a constructive dialogue and for its willingness to take into account the recommendations made by the Committee.

B. Positive factors

194. The Committee welcomes the steps taken to secure a durable peace within Guatemala, particularly by enhancing the enjoyment of human rights, including for the indigenous peoples. In this connection, the Committee notes the adoption of the Agreement on the Identity and Rights of Indigenous Peoples and the Agreement on Socio-Economic Aspects and the Agrarian Situation. The ratification by Guatemala of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries is also welcomed.

195. Further positive developments as evidenced by the signing of the Comprehensive Agreement on Human Rights, the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, and the establishment of the United Nations Mission in Guatemala (MINUGUA), particularly its human rights component, are noted with interest. Additional measures taken with a view to strengthening the monitoring and implementation of human rights are noted. In this regard, the Committee notes with satisfaction the establishment of the

* *At the 311th meeting, held on 7 June 1996.*

Office of the Human Rights Procurator and its Children's Ombudsman.

196. The establishment of the Presidential Commission for Coordinating Policy in the Field of Human Rights and the work of the Social Committee within the Cabinet of Ministers are also noted with interest, especially as regards the formulation of policies for improving the social and economic development of the most vulnerable groups in Guatemalan society.

C. Factors and difficulties

197. Over 30 years of armed conflict in the country have left a legacy of human rights violations, impunity and a climate of fear and intimidation which hampers the confidence of the population in the ability of procedures and mechanisms to ensure respect for human rights.

198. The decades of conflict affecting society have resulted in the frequent use of violence, including within the family.

199. As recognized by the State party, the root causes of the armed conflict need to be tackled, embedded as they are in socio-economic disparities and uneven land distribution as well as in historical social contrasts within the country. High levels of poverty and illiteracy and discrimination against the indigenous population and those living in poverty contribute to widespread violations of human rights.

200. Problems relating to the situation of refugees, internally displaced and "*returnees*" have also arisen out of the armed conflict. In this connection, the difficult task of meeting the needs and expectations of the population which remained in or fled from the country during the period of armed conflict is recognized.

D. Principal subjects of concern

201. The inadequacy of measures adopted to allocate priority to the implementation of the principles and provisions of the Convention and the absence of a national policy for children are matters of concern to the Committee.

202. The Committee is equally concerned about the lack of measures to harmonize

national legislation with the principles and provisions of the Convention. It is especially concerned that the Minors Code currently in force in Guatemala contains provisions which are incompatible with the Convention and does not address all the rights recognized by the Convention.

203. The Committee is deeply concerned about the insufficient efforts to collect disaggregated statistical data and to identify appropriate qualitative and quantitative indicators on the situation of children, particularly those belonging to the most disadvantaged groups, including those living and working in the street, victims of abuse, neglect or ill-treatment and internally displaced children.

204. The Committee is of the view that insufficient measures have been adopted to promote widespread awareness of the principles and provisions of the Convention to adults and children alike, particularly to those belonging to indigenous populations, in the light of article 42 of the Convention. The failure to provide sufficient activities to train and educate professionals working with or for children about the Convention is to be regretted.

205 The Committee is concerned about lacunae identified in national legislation. In this connection, the failure to provide for an age for the completion of compulsory education as required by the Constitution of Guatemala as well as by article 2 of ILO Convention No. 138 is a matter of considerable concern to the Committee. Equally, the Committee is deeply concerned that national legislation does not prohibit capital punishment or life imprisonment without the possibility of release, as required by the provisions of article 37 (a) of the Convention. Moreover, the absence in national legislation of a minimum age for criminal responsibility causes deep concern to the Committee. Similarly, the low age of marriage for girls, which is different from the one for boys, is, in the Committee's view, also incompatible with the principles and provisions of the Convention.

206. In view of the historical disparities affecting indigenous children and children belonging to groups living below the poverty line, as well as girls, the Committee is concerned about the adequacy of measures to ensure the effective implementation of the economic, social and cultural rights of children at the

national, regional and local levels, in the light of articles 2, 3 and 4 of the Convention.

207. The Committee is concerned at the insufficient support given to families facing severe problems in fulfilling their responsibilities as regards the upbringing of their children. The Committee shares the concern expressed by the representative of the State party at the widespread severe malnutrition and at the inadequacies of data and statistics monitoring nutrition.

208. Particular concern is expressed at the inadequate measures taken to ensure the effective implementation of the general principles of the Convention on the Rights of the Child both in legislation and in practice.

209. Deficiencies in the system of birth registration are of deep concern to the Committee since the failure to register children prevents them from being recognized as persons, from having access to education and health services and from being protected against trafficking in and illegal adoption of children.

210. The Committee is deeply alarmed at the persistence of violence against children, including at the reported information on the 84 children killed. The high number of child victims of violence raises serious concern, particularly in view of the ineffectiveness of investigations into crimes committed against children which paves the way for widespread impunity.

211. The Committee notes with concern the information provided by the State party that an illegal adoption network has been uncovered and that the mechanisms to prevent and combat such violations of children's rights are insufficient and ineffective.

212. Despite the considerable progress achieved in recent years in improving infant and maternal care, the Committee remains concerned about the relatively high maternal, infant and under-five mortality rates. The Committee observes that some factors contributing to high maternal deaths may be related to the inadequacies of the training given to birth attendants and of home deliveries. It is also the view of the Committee that many problems remain with respect to the re-

productive health of women, the low birth weight of children being a possible manifestation of this fact.

213. The Committee is seriously concerned that the majority of children of school age are not attending school, but are involved both in the informal and formal work sectors. Moreover, the Committee is disturbed about the inadequacy and ineffectiveness of the measures designed to ensure the establishment of appropriate standards and to monitor the working conditions of children when such activities are compatible with article 32 of the Convention. The Committee is seriously concerned at the persistence of child labour and about the lack of accurate assessment by the Government of the dimensions of the phenomenon in the country.

214. The juvenile justice system in the State party raises serious concern in the Committee, in particular the system of irregular behaviour (conducta irregular). The Committee is further concerned about the lack of specialized training of professionals working in the field of juvenile justice, which hampers efforts to ensure the independence of the judiciary and the capacity of the system to effectively investigate crimes committed against children and undermines measures to eradicate impunity.

E. Suggestions and recommendations

215. The Committee recommends that children's issues be accorded a higher priority in the State party. It is the Committee's view that the development of a global and national policy on children must be attended to urgently. The Committee also recommends that the State party adopt all the necessary measures to ensure that its national legislation fully conforms to the Convention. In this regard, and in recognition of the importance of ensuring an integrated legal approach to children's rights in the light of the principles and provisions of the Convention, the Committee encourages the State party to pursue its efforts aimed at the adoption of a Code on Children and Adolescents.

216. The Committee recommends that legislative measures be undertaken to ensure that national legislation conforms with the provisions of articles 37 and 40 of the Convention, including establishing a minimum age of criminal

responsibility. The Committee also recommends that the State party set the age for completion of compulsory schooling at 15 and consider raising the minimum age of employment to 15. Further, the Committee recommends that the State party review its legislation on the age of marriage for girls in the light of the principles and provisions of the Convention, notably those of its articles 2, 3 and 24, with a view to raising it and ensuring the same age for girls and boys.

217. The Committee encourages the State party to pursue its efforts to strengthen the institutional framework for the promotion and protection of human rights in general and the rights of the child, in particular. The Committee recommends that a permanent and multidisciplinary mechanism be developed for coordinating and implementing the Convention at the national and local levels and in urban and rural areas. The Committee also encourages the promotion of close cooperation with non-governmental organizations in this regard.

218. The Committee further recommends that the State party give priority attention to the development of a system of data collection and to the identification of appropriate disaggregated indicators with a view to addressing all areas of the Convention and all groups of children in society. Such mechanisms can play a vital role in systematically monitoring the status of children and evaluating the progress achieved and the difficulties hampering the realization of children's rights, and can be used as a basis for designing programmes to improve the situation of children, particularly those belonging to the most disadvantaged groups, including girls, children living in rural areas and indigenous children. It is further suggested that the State party request international cooperation in this regard, particularly from the United Nations Children's Fund.

219. In view of the State party's willingness to develop a culture of human rights and to change attitudes towards children in general and the indigenous population in particular, the Committee recommends that information and education about children's rights be disseminated among children and adults alike. It is also recommended that consideration be given to the translation of such information into the main indigenous languages and that

appropriate measures be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy. In the light of the considerable experience of the United Nations Children's Fund and other organizations in responding to such challenges, it is recommended that international cooperation be sought in this regard.

220. It is the view of the Committee that training and education in the principles and provisions of the Convention on the Rights of the Child is urgently required and must encompass all professionals working with or for children. In addition, the Committee recommends that the inclusion of children's rights in the school curricula be pursued as a measure to enhance respect for the indigenous culture and multiculturalism and to combat paternalistic and discriminatory attitudes which, as recognized by the State party, continue to prevail in society.

221. With respect to article 4 of the Convention, it is the Committee's opinion that sufficient budgetary provision must be made to respond to national and local priorities for the protection and promotion of children's rights. While noting the trend towards decentralizing the provision of services to the municipal level as a means of promoting greater popular participation, the Committee emphasizes that such a policy must be designed to overcome and remedy existing disparities between the regions and rural/urban areas. To ensure the full implementation of article 4, the Committee recommends that consideration be given to the provision of international assistance within the general framework of the Convention.

222. The Committee recommends that urgent measures be taken to ensure effective consideration of the general principles of the Convention, namely its articles 2, 3, 6 and 12, in the national process of implementing the Convention.

223. The Committee recommends that a comprehensive public information campaign be developed and implemented urgently to combat the abuse of children in the family and within society as well as the use of corporal punishment in schools.

224. The Committee recommends that the State party introduce the measures necessary to monitor and supervise effectively the system of adoption of

children in the light of article 21 of the Convention. It is also recommended that adequate training be provided to concerned professionals. In addition, it is recommended that the Government consider ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

225. The Committee encourages the State party to strengthen its support to families in carrying out their child-rearing responsibilities, such as by providing nutritious food and conducting vaccination programmes. As a means of addressing the problems of maternal death and poor antenatal care and delivery services, the Committee suggests that the State party consider introducing a more effective system training medical personnel and birth attendants. The Committee also recommends that the State party consider requesting international cooperation from relevant international organizations to address issues relating to the reproductive health of women.

226. The Committee encourages the State party to implement the "*Food for Education Programme*" as an incentive for children to attend school. It also recommends that a comprehensive nutritional programme be developed, taking into particular account the special needs of children.

227. The Committee encourages the State party to pursue its efforts, in conformity with the Agreement on Socio-Economic Aspects and the Agrarian Situation, to increase the budgetary allocations for education by 50 per cent up to the year 2000. With a view to ensuring the implementation of articles 28 and 29 of the Convention, the Committee recommends that the State party focus greater efforts on providing for compulsory and free primary education, eradicating illiteracy and ensuring the availability of bilingual education for indigenous children. Moreover, greater efforts should be made in training qualified teachers. Such measures will contribute to the prevention of any form of discrimination on the basis of language with regard to the right to education.

228. The Committee recommends that provision be made for offering social assistance to families to help them with their child-rearing responsibilities as laid down in article 18 of the Convention as a means of reducing institutionalization of children. Further efforts are also requi-

red to ensure the active participation of disabled children in the community in conditions which ensure their dignity and promote their self-reliance, as well as to ensure that disabled children are separated from adults suffering from mental ill-health. The Committee recommends that measures be taken to review periodically the placement and treatment of children as required under article 25 of the Convention.

229. The problems of children traumatized by the effects of armed conflict and violence in society are, in the Committee's view, a matter of serious concern. In this connection, the Committee recommends that the State party give consideration to the implementation of specific projects for children, to be carried out in an environment which fosters the health, self-respect and dignity of the child.

230. In view of the fact that the Constitution of Guatemala recognizes the predominance of duly ratified international conventions in the field of human rights, the Committee urges the State party to apply the principles and provisions of the Convention in the area of juvenile justice, rather than the provisions of the national legislation which are in contradiction with the Convention, in particular those relating to the system of "*irregular behaviour*". The Committee further recommends that the juvenile justice system be revised to ensure that it is compatible with the principles and provisions of the Convention, including its articles 37, 39 and 40, as well as other relevant international instruments in the field. In this connection, it is recommended that the State party consider requesting technical assistance from international organizations, including the United Nations Centre for Human Rights.

231. As a means of tackling the interrelated issues of education and child labour, the Committee recommends that all necessary measures be adopted to ensure that children have access to education and that they are protected from involvement in exploitative activities. The Committee further recommends that effective public awareness campaigns be launched for the prevention and elimination of child labour in the light of article 32 of the Convention. In this regard, the Committee recommends that the State party seek technical assistance from the International Labour Organization.

232. The Committee recommends that the State party consider developing an agenda for priority action to ensure an integrated approach to the implementation of human rights in Guatemala in the light of the suggestions and recommendations addressed to the State, particularly in the area of children's rights.

233. Finally, the Committee recommends that the State party's report, the summary records of the examination of the report in the Committee and the Committee's concluding observations be given wide dissemination in Guatemala. The Committee suggests that these documents be brought to the attention of the Congress as a means of ensuring follow-up to the suggestions and recommendations made by the Committee. ❑

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